

No. 9/5/84-6Lab./3427.—In pursuance of the provisions of section 17 of Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Labour Court, Ambala in respect of the dispute between the Workman and the management of M/s. The Sub-Divisional Officer, Haryana State Minor Irrigation (Tubewell) Corporation Ltd., Panipat and (ii) The Executive Engineer, Haryana State Minor Irrigation Tubewell Corporation Division No. 3, Karnal (Haryana).

IN THE COURT OF SHRI V.P. CHAUDHARI, PRESIDING OFFICER, LABOUR COURT,
AMBALA AT AMBALA CITY

Reference No. (old) 28 of 1980.

(New) 274 of 1984

SHRI SHIV NATH SINGH WORKMAN AND THE MANAGEMENT OF THE SUB-DIVISIONAL
OFFICER, HARYANA STATE MINOR IRRIGATION (TUBEWELL) CORPORATION
LTD., PANIPAT AND THE EXECUTIVE ENGINEER, HARYANA STATE MINOR
IRRIGATION TUBE-WELLS CORPORATION DIVISION-3,
KARNAL (HARYANA)

Present.—

Shri D.P. Pathak, for workman.

Shri S. Kaushal, for the Management.

AWARD

The Hon'ble Governor of Haryana in exercise of the powers conferred,—*vide* clause (d) of sub-section (i) of Section 10 of the Industrial Disputes Act, 1947, referred the following dispute to the Presiding Officer, Labour Court, Rohtak between Shri Shiv Nath Singh and the Management of the Sub-Divisional Officer, Haryana State Minor Irrigation Tubewell Corporation Ltd., Panipat and the Executive Engineer, Haryana State Minor Irrigation Tubewells Corporation Division No. 3, Katnal (Haryana). The terms of the reference are as under :—

“Whether the termination of services of Shri Shiv Nath Singh workman was justified and in order ? If not to what relief is he entitled to ?”

The present reference was originally made to the Labour Court, Rohtak, when Labour Court at Ambala in April, 1984 was created, this reference was received from transfer.

Shri Shiv Nath Singh, workman alleged that he joined the services of respondent as office chowkidar but the respondent wanted to take work from him as Office-cum-Store Chowkidar then he denied to give double duty. He also requested the respondent to hand over the keys of office and also provide him one room for residence for which respondent cut a sorry figure and ultimately his service were terminated in contravention of Section 25 of the Industrial Disputes Act, 1947.

Respondent have contested the reference and contended that the reference is not maintainable being bad in law. It was also contended that respondent have not been properly sued. It was further contended that contents of para No. 1 of Claim Statement pertains to another division which are denied for want of knowledge. It was further contended that applicant refused to prefer duty on 12th May, 1979 and he made a statement in writing in his own hand to this effect and thereafter he never reported on duty. In the office campus there is one store. There were certain other articles which were lying in the office campus, safety of those have to be watched by the applicant but he refused to do that which resulted into terminatin of services of workman, which was also contributed to wilful absence of the workman from duty. Workman filed replication and refuted the averments made by the respondent in the written statement.

On the pleadings of the parties the following issues were framed :—

Issue No. 1.

Whether the reference is not maintainable as per preliminary objection ? OPM

Issue No. 2.

Whether the termination of services of Shri Shiv Nath Singh, workman was justified and in order ? If not, to what relief is he entitled to ? OPM

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I have heared authorised representatives of the parties and have persued the oral and docuumentary evidence placed on the file. My issue-wise findings are as under :—

Issue No. 1 :

The cause of this issue was upon the respondent but respondent failed to discharge it. Haryana State Minor Irrigation Tube-Well Coroporation is an commercial department there was a relationship of applicant with resppndent as of a worker and management so the reference is maintainable.

Issue No. 2 :

The onus of this issue was also upon the respondent to establish that workman absented from his duty of his own or wilfully. To prove this fact management examined Shri Sulekh Chand S.D.O., H.S.M.I.T.C. as MW-2 while Omparkash, S.D.C. appeared as MW 1. Both the witnesses admitted this fact that applicant was appointed as office Chowkidar but he refused to watch the store and the material lying in the campus of the office. In other words he even refused to watch the material lying inside the office, but this fact has been contradicted by Shri S.N. Singh workman when he appeared as A.W. I, but the Photo-stat copy of letter, dated 12th May, 1979 which is Exhibit -MW-1/1 and similar endorsement on Photo-stat copy Exhibit MW-1/2 clearly shows that conduct of workman is extraordinary, un-desirable and he never likedto work as Chowkidar and to obey the orders of superiors. No doubt his appoint was as a office chowkidar but it does not mean that he will not guard the articles lying in the store which exist in the office building and material lying in the office compus. Moreover the respondent was not ready to provide any residential accomodation to the applicant in the office building nor the workman adduced any evidence that an official residential acommodation was available for the chowkidar and he denied that relief. I think that applicants Shri Shiv Nath Singh was most adament, disobedient and was un-willing workman. He left his services with his own, so the termination of the services of workman is justified and he is not at all entitled to any relief claimed for.

Relief :

In view of my findings on Issue No. 2, I hold that termination orders regarding the termination of services of Shri Shiv Nath Singh workman is justified so I pass my award accordingly.

The 13th March, 1985.

V. P. CHAUDHRY,

Presiding Officer,
Labour Court, Ambala.

Endorsement No. 993, dated Ambala City, the 16th April, 1985.

Forwarded (Four Copies), to the Financial Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

V. P. CHAUDHRY,

Presiding Officer,
Labour Court, Ambala.

The 15th May, 1985.

No. 9/5/84-6Lab/3437.—In pursuance of the provisions of section 17 of Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s. Premier Straw Board Paper Mills (P) Ltd., Plot No. 87-88, Sector 25, Faridabad.

BEFORE SHRI R. N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 148/1983

Between

SHRI SHIV PARSHAD WORKMAN AND THE MANAGEMENT OF M/S. PREMIER STRAW BOARD
PAPER MILLS (P) LTD., PLOT NO. 87-88, SECTOR 25, FARIDABAD

Present:—Shri Manohar Lal, for the workman.

Shri R. C. Sharma, for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Shiv Parshad, Workman and the management of M/s. Premier Straw Board Paper Mills (P) Ltd., Plot No. 87-88, Sector 25, Faridabad, to this Tribunal for adjudication:—

Whether the termination of service of Shri Shiv Parshad was justified and in order ? If not, to what relief is he entitled ?

2. Notices were issued to both the parties. The claimant in his claim statement filed on 19th June, 1984 alleged that he was working as Turner since 19th April, 1981 in the respondent factory, but the management illegally terminated his services with effect from 20th October, 1982 and that persons junior to him were retained. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The respondent management in their written statement, dated 27th July, 1984 pleaded that the claimant was working as Turner in the Workshop where only two turners were employed and that the management decided to close the workshop as running of the factory was uneconomical. It was further pleaded that the management terminated the services of both the turners by way of retrenchment due to closure of the workshop when the letter of retrenchment dated 20th October, 1982 was issued which was received by the claimant but he refused to receive the amount of Rs. 2,567-60 paise as notice pay, compensation, etc. when the management sent the said amount by money order, but he refused to receive the same.

4. The claimant in his rejoinder, dated 17th August, 1984, reiterated the pleas taken in the claim statement.

5. On the pleadings of the parties, the following issue was framed on 17th August, 1984:—

(1) Whether the termination of service of Shri Shiv Parshad was justified and in order ? If not, to what relief is he entitled ? OPM

6. It may be mentioned that the management has examined one witness and documents, Ex. M-1 to M-9, have been tendered into evidence. The claimant has appeared in the witness box and document Ex. W1 has been tendered into evidence. After going through the entire evidence and hearing both the representatives of the parties, my finding on the above issue is as under:—

Issue No. 1 :

7. The management examined Shri Om Parkash Sharma, Manager as MW-1, who stated that there used to be a workshop in their factory, which was being run by two Turners and since there was less work, the management decided to close down the Workshop, as it was not economical to run the same. He further stated that Ex. M-1 was the copy of the notice given under Section 9-A, which was also received by the Union and that Ex. M-2 was the photostat copy of the seniority list which was displayed on the notice board and that the claimant received one month notice Ex. M-3. He further stated that the amount was offered to him,—*vide* voucher Ex. M-4, but he refused to receive the same and that the amount was sent by 4 money orders,—*vide* coupens Ex. M-5 to M-8, but the claimant refused to receive the said amount even by moneyorders. He further stated that the services of the other turner were terminated/transferred and that Ex. M-9 was the copy of the form 'P'. He then stated that one lathe machine was disposed of and that the second was one lying idle. He then stated that no turner had been employed thereafter.

8. Shri Shiv Parshad claimant (WW-1) stated that he was employed in the respondent factory in August, 1970 as Turner but he was turned out on 20th October, 1982 and that no letter was given to him except the letter Ex. W-1. He further stated that he was called at about 4.30 p.m. at the gate of the factory and was asked to take the amount due to him but he did not receive the amount because the retrenchment was illegal and filed a complaint in Labour Office, Sector-7.

9. A perusal of the bove evidence would show that according to the testimony of Shri Om Parkash Sharma Manager, there were two turners in the factory including the claimant, who used to work on two lathes, and that the said workshop was closed because it was not economical to run the same and that services of both the turners including the claimant were terminated—*vide* termination letter Ex. M-2, dated 20th October, 1982 and that the claimant had refused to receive the amount of notice pay, compensation, etc.,—*vide* voucher Ex. M-4 on 20th October, 1982 and that he also refused to receive the amount which was sent to him by moneyorder—*vide* coupens Ex. M-5 to M-8. Ex. M-9 is the copy of form 'P' which was sent to the Government in which they informed regarding the retrenchment. It was argued by the representative of the management that it was a case of retrenchment, but the management by way of abundant caution, issued the notice under section 9-A inform 'E'. Reliance was placed on the ruling reported as *L. Robert D'Souza Appellant V. The Executive Engineer, Southern Railway and another, 1982-Lab.I.C. page 811*, in which it is laid down that when a workman is retrenched, it cannot

be said that change in his condition of service is effected and that the provisions of Section 9-A of the Industrial Disputes, Act, 1947, are not attracted. This evidence further shows that the claimant was retrenched on 20th October, 1982 because the workshop was closed and the services of both the turners including the claimant were terminated and that the management complied with the provisions of Section 25-F of the Industrial Disputes Act, 1947, but the claimant refused to receive the amount of compensation or notice pay as mentioned above. The testimony of WW-1 Shri Shiv Parshad to the effect that he was retrenched due to trade Union activities is without force because the management has led evidence to show that the claimant was retrenched when the workshop was closed as it was found uneconomical to run the same. There has been no discrimination because the services of the other turners were also terminated. Consequently the termination of services of the management was justified and in order. The claimant is not entitled to any relief. The award is passed accordingly.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Dated 29th April, 1985.

Endst. No. 352, dated 29th April, 1985.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 3rd May, 1985

No. 9/5/84-6Lab/3439.—In pursuance of the provisions of section 17 of Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal Faridabad in respect of the dispute between the Workmen and the management of M/s Remington Rand of India Ltd. 20/7 Mathura Road, Faridabad.

BEFORE SHRI R.N. BATRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA,
FARIDABAD

Reference No. 253/1982

Between

SHRI SHYAM JEET WORKMAN AND THE MANAGEMENT OF M/S REMINGTON RAND OF
INDIA LTD. 20/7 MATHURA ROAD, FARIDABAD

Present.—Shri S.S. Gupta, for the workman.

Shri R.N. Rai with Shri Rajesh Sharma, for the management.

AWARD

In exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana referred the following dispute between Shri Shyam Jeet Workman and the management of M/s Remington Rand of India Ltd., 20/7, Mathura Road, Faridabad, to this Tribunal, for adjudication:

Whether the termination of service of Shri Shyam Jeet, was justified and in order? If not, to what relief is he entitled?

2. Notices were issued to both the parties. In the demand notice, which was treated as claim statement on the request of the claimant on 22nd September, 1982, it was alleged that the services of the claimant were terminated by the respondent company on 3rd May, 1981 when he was working as Press Operator and it was further alleged that the claimant raised a demand notice when the respondent company agreed to take the claimant back on duty during the conciliation proceedings and joined duty on 23rd May, 1981 and worked upto 19th June, 1981. It was further alleged that the respondent Company was annoyed with the claimant having raised demand notice dated 11th May, 1981 and did not allow him to work with effect from 19th June, 1981 and terminated his services in an illegal manner. It was, therefore, prayed that the claimant be reinstated with full back wages.

3. The respondent Company in its written statement dated 8th October, 1982, pleaded that the demand notice dated 27th February, 1982 was sent directly by the claimant to the Conciliation Officer and that no

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industrial dispute was raised by the claimant with the management and as such no industrial dispute existed between the parties. It was further pleaded that the claimant was employed as Press Operator on daily wages on casual basis in October, 1980 and since his services were not required, his employment was terminated on 4th May, 1981. It was further pleaded that the claimant served a demand notice dated 11th May, 1981 and his case was taken up by the Remington Rand Employees Union and during the conciliation proceedings, it was agreed to take him back on duty as a casual worker when the claimant joined duty on 23rd May, 1981 and remained in employment till 19th June, 1981. It was then pleaded that as the requirement of a casual worker/Press Operator ceased to exist, the services of the claimant were terminated with effect from 19th June, 1981 in a legal manner.

4. The claimant in his rejoinder dated 4th November, 1982 reiterated the pleas taken in the demand notice.

5. On the pleadings of the parties, the following issues were framed on 5th November, 1982:—

(1) Whether there is no industrial dispute between the parties? OPM

(2) Whether the termination of service of Shri Shyam Jeet was justified and in order? If not, to what relief is he entitled? OPM

6. It may be mentioned that the management has examined four witnesses and documents, Ex. M-1 to M-12, have been tendered into evidence. The workman has examined two witnesses and documents Ex. W-1 to W-3 have been tendered into evidence. After going through the entire evidence and hearing the representatives of both the parties, my findings on the above issues are as under:—

Issue No. 1:

7. The Management has examined MW-1 Shri A.S. Sethi, Personnel Manager, who stated that the demand notice Ex. M-7 was not received direct from the claimant but was received alongwith the letter Ex. M-6. It was argued that no industrial dispute existed between the parties because the workman should have sent the demand notice direct to the Management. Reliance was placed on the ruling reported as **New Delhi Tailoring Mazdoor Union and S.C. Sharma & Co. (P) Ltd. Etc. 1979 (39) FLR-195**, in which it is laid down that absence of the demand notice upon the management vitiates order of reference. The second ruling is **Sindhu Resettlement Corporation Ltd. and Industrial Tribunal of Gujarat and others, 1968 (16) FLR-307**, in which it is laid down that if no dispute at all was raised by the employees concerned with management, any request sent by him to the Government would only be a demand by him and not an industrial dispute. The 3rd ruling is **Feddars Lloyd Corporation Private Ltd. and Lieutenant Governor, Delhi and others, 1970 (20) (FLR) 343**, in which it is laid down that the demand by the workman must be raised first on the management and rejected by them before an industrial dispute can be said to arise and exists. The fourth ruling is **Orissa Industries (P) Ltd and Presiding Officer, Industrial Tribunal and others, 1975 (31) FLR 305**, in which it is laid down that in the absence of any proof of demand, conclusion is irresistible that there existed no industrial dispute between the parties. The rulings are distinguishable on facts because in the present case, the demand notice dated 27th February, 1982, copy Ex. M-7, was addressed to the respondent Company and its copy was sent to the Conciliation Officer, Sector-7, Faridabad. WW-2 Shri Mohinder Kumar Mehta, Head Clerk in the office of the Labour-cum-Conciliation Officer, Sector-7, Faridabad, also stated that on 27th February, 1982, the demand notice was given by the claimant against M/s. Remington Rand India Ltd. and its copy was received in their office on 2nd March, 1982. The demand notice was thus addressed to the Respondent Company and its copy was sent to the Labour-cum-Conciliation Officer. Moreover, in the ruling reported as **M/s Remakrishna Mills (Coimbatore) Ltd., Ganapathy Post, Coimbatore Rep. by Managing Director R. Doraisamy and The Government of Tamil Nadu Rep. by Secretary to Government Labour & Employment Department 21 Presiding Officer, Labour Court, Coimbatore etc. 1984-II-LLJ-259**, which is also based on the decision of the Hon'ble Supreme Court, it was held as under:—

"There cannot be a doubt that for the existence of an industrial dispute there ought to be a demand by the workman and a refusal to grant it by the Management. How the demand should be raised should not and could not be a legal notion of fixity and rigidity. The grievance of the workmen, and the demand for its redressal must be communicated to the management. The means and mechanism of communication adopted are not matters of much significance so long as the demand is that of the workmen and reaches the management. A written demand on the management is not in all cases of sine-qua-non. There must arise a dispute or difference with the meaning of S.2 (K) or S.2 (A) of the Industrial Disputes Act. Talks and discussions before the Assistant Commissioner of Labour related to the order of dismissal and the demand to set them at naught and take back the workmen."

Demand as such need not in all cases be directly made by a representation to the management and the demand could be made through other sources also."

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Consequently, the dispute regarding the termination of services of the claimant amounts to an industrial dispute and it cannot be held that no industrial dispute exists between the parties. The issue is decided against the management.

Issue No. 2:

8. The Management has examined MW-1 Shri A. S. Sethi, Personnel Manager, who stated that the claimant was appointed on casual basis on the post *vide* application Ex. -M-1 and that the order of appointment was also passed on that application at Mark 'A'. He further stated the appointment letters were issued to the regular employees or the probationers. He then stated that there was a serious labour trouble in the factory from April, 1980 to September, 1980, due to which the production was less which matter was ultimately settled. He then stated that two Press Operators were under suspension when the claimant was appointed on casual basis, but his services were terminated in May, 1981, who filed the demand notice Ex. M-2 dated 11th May, 1981 which was received by the Company from the Conciliation Officer *vide* letter Ex. M-3 and that Ex. M-4 was the copy the settlement arrived at during the conciliation proceedings, according to which the claimant was taken back on duty on casual basis but his services were terminated on 19th/20th June, 1981 because the same were not required. MW-2 Shri J.R. Ratra, Time Keeper, MW-3 Shri V.M. Sharma, Foreman and MW-4 Shri Grish Kumar Workman also stated that the claimant was appointed on casual basis and served in the factory twice as deposed to by MW-1 Shri A.S. Sethi. Ex.M8 and M9- are the copies of the conciliation proceedings, while Ex-M-11 and M-12 are the attendance cards. Ex. M-10 is the photostet copy of the attendance of register.

9. Shri Shyam Jeet claimant has appeared as WW-1 and stated that he was employed by the respondent in September, 1981 as Press Operator at Rs. 390 per month, but after six months he was turned out by the management when he served the demand notice and was taken back on duty after one month. He then stated that he was again turned out by the management after one month and that the post of Press Operator still existed. He further stated he was turned out due to accident, which took place in the factory and up per portion of the two fingers of his right hand was damaged. He further stated that he was not given any compensation or notice pay by the management. Ex. W-1 and W-2 are copies of the conciliation proceedings regarding the previous demand notice dated 11th May, 1981. Ex.W-3 is the copy of the letter dated 3rd February, 1982 sent by the Labour Commissioner, Haryana, to the claimant in which he was informed that since he was allowed to join duty in conciliation proceedings, which were held on the previous demand notice dated 11th May, 1981, therefore, there was no justification for the Government to make any reference in his case.

10. A perusal of the above evidence would show that the claimant was appointed for one day only on 27th September, 1980 on his application Ex. M-1 and on 28th September, 1980 an order was passed on this application that claimant be taken as casual worker for one month. This order, therefore, show that the claimant was casual worker and was not appointed either on permanent basis or as a probationer. He remained in service of the respondent company from 27th September, 1980 to 3rd May, 1981, when his services were terminated but was again taken back on duty with effect from 17th May, 1981 as mentioned in the letter Ex. W-3. His services were terminated on 19th June, 1981. The total number of days from 27th September, 1980 to 3rd May, 1981 and 17th May, 1981 to 19th June, 1981 comes to 253 days. The claimant was a casual worker and he admitted in cross examination while appearing as WW-1 that no wages were being paid to him for weekly off days. As such he did not actually work for Sundays during this period, which were weekly off days. As already mentioned, he was not a probationer nor a regular employee and since he was a causal worker, therefore, the period of 36 days, which were weekly off days, will have to be excluded. The actual working days of the claimant, therefore come to 253 days minus 36 days=217 days. Since the claimant had not actually worked for 240 days, therefore, the provisions of Section -25-F of the Industrial Disputes Act, 1947, are not attracted to the facts of the present case and as such he is not entitled to notice pay or compensation. Consequently the termination of service of the claimant was justified and in order and as such the claimant is not entitled to any relief. The award is passed accordingly.

Dated 19th April, 1985.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endst. No. 342, dated 19th April, 1985

Forwarded (four copies) to the Commissioner & Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under Section 15 of the Industrial Disputes Act, 1947.

R. N. BATRA,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.